

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,	§	
Plaintiff-Respondent,	§	
	§	
v.	§	Cr. No. C-03-196 (1)
	§	C.A. No. C-07-161
SERGIO CHAVEZ,	§	
Defendant-Movant.	§	

**ORDER GRANTING MOTION TO PROCEED ON APPEAL
IN FORMA PAUPERIS AND GRANTING MOTION FOR TRANSCRIPT**

By Order entered November 13, 2007 (D.E. 75) after an evidentiary hearing in this case, the Court denied Sergio Chavez's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. (D.E. 60).¹ Final judgment was entered the same date. (D.E. 74). Chavez timely appealed, and has filed an application to proceed on appeal *in forma pauperis*, now pending before the Court. (D.E. 83). Also pending before the Court is a motion for transcripts, in which Chavez requests a copy of the transcript from the evidentiary hearing in this case at government expense. (D.E. 78.)

Chavez's motion to proceed *in forma pauperis* is incomplete in that it does not include a certification from his place of incarceration regarding his inmate trust account. He explains that he is currently in transit from Karnes County Correctional Center and will not have access to that type of documentation until he arrives at FCI Herlong. (D.E. 83 at 1, 2.) He avers, however, that he has not received any money in the past twelve months, that he is not currently employed, and that he does not have any cash or checking accounts or other property. Additionally, the Court previously found

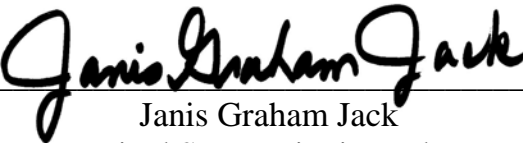
¹ Docket entries refer to the criminal case, CR. No. C-03-169.

that he was entitled to appointed counsel, not only in his underlying criminal case and on direct appeal, but also in his § 2255 proceedings.

Thus, although the Court does not have a complete *in forma pauperis* application, it nonetheless finds based on the totality of the record before it, that Chavez cannot pay the \$455 appellate filing fee without undue hardship. Chavez's motion to proceed on appeal *in forma pauperis* (D.E. 83) is therefore GRANTED.

Additionally, the Court grants Chavez's request for the evidentiary hearing transcript at government expense. (D.E. 78.) The Clerk is directed to obtain and file a copy of the transcript from Chavez's November 9, 2007 evidentiary hearing at the Court's expense, and to provide a copy to Chavez at no charge to him.

It is so ORDERED this 26th day of February, 2008.



Janis Graham Jack
United States District Judge